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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,777	10/09/2001	Max Schaldach	7040-45	6887

21324 7590 10/04/2005
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EXAMINER

THALER, MICHAEL H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/974,777

Applicant(s)

SCHALDACH ET AL.

Examiner

Michael Thaler

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>appendix</u> . |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29-32,34,35,37-40,42,43,45-50,52,53,55-58,60,61 and 63-65.

Continuation of Disposition of Claims: Claims rejected are 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29-32,34,35,37-40,42,43,45-50,52,53,55-58,60,61 and 63-65.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 8, 2005 has been entered.

Claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47 and 48 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alt (DE 19834956). Alt, as shown the attached appendix (which is based on the equivalent U.S. Patent 6,398,805 only because this figure is clearer than the equivalent figure in the foreign patent), discloses bar elements and connecting bars wherein the first and second bar element portions are entirely concave over the entire length of the bar element portion as now claimed. Alternatively, it would have been obvious that the Alt first and second bar element portions are entirely concave over the entire length of the bar element portion since figure 1 appears to show this. As to claim 5, the bar element portions are inherently adapted to keep stresses below a plastic deformation limit upon

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being moved to the implantation location by being curved in such a way.

Claims 12, 13, 15-18, 29-32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Hoefer (DE 19840645). As to claim 12, Alt fails to disclose the direction of curvature of the bar element portions changing in the longitudinal direction of the stent. However, Hoefer teaches that the direction of curvature of the bar element portions should change in the longitudinal direction of the stent (as shown in figure 2 wherein the curvature alternates between concave and convex in the longitudinal direction of the stent). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to change the direction of curvature of the Alt bar element portions so that it too would have this advantage. As to claim 31, Alt fails to disclose the connecting bars as being rectilinear and extending between bar elements that are displaced relative to each other. However, Hoefer teaches that the connecting bars should be so constructed (as shown in figure 2). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would

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have been obvious to so construct the Alt connecting bars so that it too would have this advantage.

Claims 57, 58, 60, 61, 63 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Hoefer (DE 19840645) as applied to claims 12, 13, 15-18, 29-32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55 and 56 above, and further in view of Kveen et al. (6,261,319). Alt fails to disclose the connecting bars engaging a central region of the bar element portions and being adapted to the curvature thereof. However, Kveen et al. teach that the connecting bars should be so constructed (e.g. connecting bar 1032 in figure 13). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to so shape the Alt connecting bar so that it too would have this advantage.

Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319) for the reasons set forth in the paragraph above.

Applicant's arguments filed August 8, 2005 have been fully considered but they are not persuasive. All of the Alt bar element portions extend curvedly in the same manner. That is, they all extend in a concave arcuate manner. The phrase in claim 1, lines 12-13, "curvedly in an identical concave or

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convex arcuate manner" does not require the radius of curvature of the bar element portions to be identical. Nor does it require the length of the bar element portions to be identical. If applicant wishes the claim to require that the shape and size of all of the bar element portions in the first annular support member be identical, then this limitation should be incorporated into the claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht
9/8/05



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731

APPENDIX

U.S. Patent

Jun. 4, 2002

Sheet 1 of 6

US 6,398,805 B1

APPENDIX

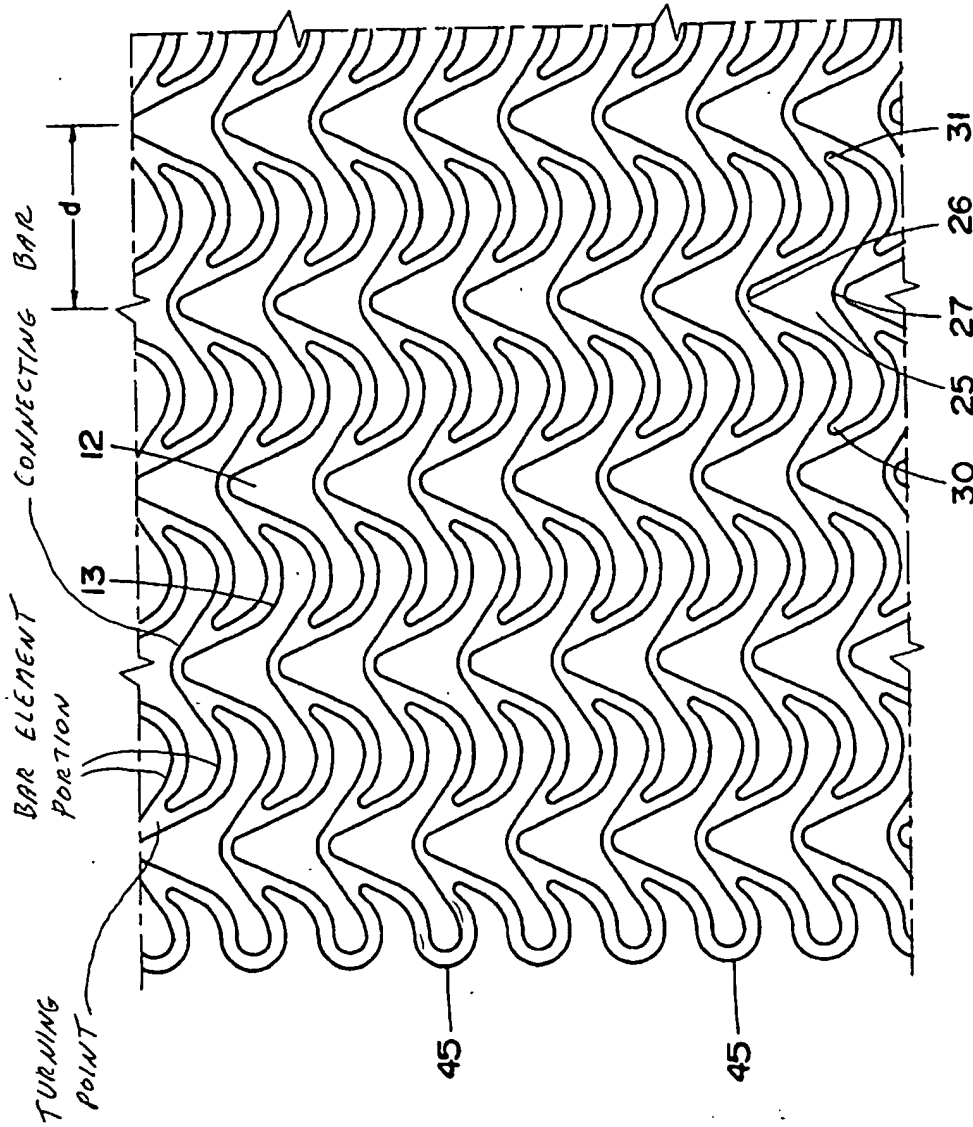


FIG. 1